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6 Attorneys for Third-Party Defendant  
 7 PERFORMANCE CONTRACTING, INC.

8  
 9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA for the use and  
 13 benefit of WEBCOR CONSTRUCTION, INC. dba  
 WEBCOR BUILDERS, and WEBCOR  
 14 CONSTRUCTION, INC. dba WEBCOR  
 BUILDERS,

15 Plaintiffs,

16 vs.

17 DICK/MORGANTI, a joint venture; DICK  
 CORPORATION; THE MORGANTI GROUP;  
 18 AMERICAN CASUALTY COMPANY OF  
 READING, PENNSYLVANIA; NATIONAL  
 19 UNION FIRE INSURANCE COMPANY OF  
 PITTSBURGH, PA; and DOES 1-10, inclusive,

20 Defendants.

21  
 22 AMERICAN CASUALTY COMPANY OF  
 READING, PA; NATIONAL UNION FIRE  
 23 INSURANCE COMPANY OF PITTSBURGH,  
 PA,

24  
 25 Third-Party Plaintiffs,

26 Case No. 3:07-CV-02564-CRB

27 **DECLARATION OF EUGENE D.  
 CONCANNON IN SUPPORT OF  
 PERFORMANCE CONTRACTING  
 INC.'S STATUS CONFERENCE  
 STATEMENT**

DATE: February 22, 2008

TIME: 10:00 a.m.

JUDGE: Hon. Charles R. Breyer  
 (Courtroom 8)

1 || VS.

2 BOYETT CONSTRUCTION, INC., a California  
3 corporation; MARELICH MECHANICAL CO.,  
4 INC., a California corporation; PERFORMANCE  
5 CONTRACTING GROUP, INC. dba  
6 PERFORMANCE CONTRACTING, INC., a  
7 Delaware corporation; PERMASTEELISA  
8 GROUP USA HOLDINGS CORP., a Delaware  
9 corporation dba PERMASTEELISA CLADDING  
TECHNOLOGIES L.P., a Delaware limited  
partnership, dba PERMASTEELISA CLADDING  
TECHNOLOGIES, LTD.; ROSENDIN  
ELECTRIC, INC., a California corporation;  
THIRD PARTY DOE DEFENDANTS 1  
THROUGH 20.

### Third Party Defendants.

2 I, Eugene D. Concannon, declare as follows:

3       1. I am an employee of third-party defendant and plaintiff Performance Contracting,  
4 Inc. ("PCI") in the above-captioned case. I served as one of the Project Managers for PCI at the  
5 construction of the GSA Federal Building located at 7<sup>th</sup> and Mission Streets in San Francisco,  
6 California. If called upon, I could and would competently testify to the matters stated herein.

7 2. PCI's underlying claim for the GSA project is approximately \$7,549,856.00. A  
8 substantial portion of PCI's claim consists of its unpaid contract balance of approximately  
9 \$3,005,018.00. Dick/Morganti ("D/M") stopped making contract payments to PCI beginning in  
0 or about August 2006 when it asserted various back charges against PCI for work on the project.  
1 PCI protested the vague and unsubstantiated back charges and demanded a meeting with D/M to  
2 discuss the issue.

3       3. Pursuant to PCI's request a meeting was first held on December 13, 2006,  
4 between representatives of PCI and D/M to discuss the back charge issue. I attended that  
5 meeting along with George DeMartini of PCI and PCI's consultant, Jim Howard.

4. On April 5, 2007, another meeting was held to discuss D/M's alleged back

1 charges. I attended that meeting along with Robert Dean of PCI. During the meeting, we  
 2 provided further responses to D/M's back charges. The meeting was also attended by one of  
 3 PCI's consultants on the project, Jim Howard, who provided a detailed response to many of  
 4 D/M's alleged back charges. At the conclusion of the meeting, D/M requested that there be  
 5 further meetings between the parties' respective staffs to review and discuss the information and  
 6 documentation provided by PCI. Thereafter, PCI met two additional times with D/M in April  
 7 and May 2007. I personally attended both meetings along with other personnel from PCI.

8       5. During these meetings, PCI provided specific and voluminous documentation as  
 9 to why D/M's back charges had no merit. At the conclusion of these meetings, D/M voiced no  
 10 disagreement with PCI's presentation of facts, but rather stated that it needed more time to  
 11 review PCI's position. Since these meetings in April and May 2007, D/M has failed to provide  
 12 PCI with any substantive response to its arguments or to the voluminous documentation that PCI  
 13 provided supporting its position with the exception of providing copies of some billings from  
 14 another subcontractor retained on the project and related invoices for material purchased. These  
 15 billings and invoices related to one and only one of D/M's alleged back charges against PCI and  
 16 concerned in-fill framing and gypsum sheathing work that was done on the exterior of the GSA  
 17 building. These billings and invoices were not accompanied by any type of explanation of their  
 18 importance nor an itemization. In contending that PCI was responsible for this work, D/M took  
 19 the position that the work was included in PCI's subcontract. However, in its global claim filed  
 20 recently with the GSA, D/M has taken the contrary position and now asserts that this work was  
 21 extra work entitling it to compensation.

22       I declare under penalty of perjury under the laws of the United States of America that the  
 23 foregoing is true and correct. Executed on February 20 2008, at ANAHENI, California.

24         
 25       Eugene D. Concannon